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Supreme Court of the United States

OCTOBER TERM 1957

No. ~~1099~~ 201

MACNEIL BROS. COMPANY et ali
Plaintiffs - Petitioners

v.

JUSTICES OF THE SUPERIOR COURT et ali
Defendants - Respondents

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIRST CIRCUIT.

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This is a petition for writ of certiorari to the Court of Appeals for the First Circuit to review a judgment entered by it upon appeal in the case of MacNeil Bros. Company et ali v Justices of the Superior Court et ali. Said judgment was entered on March 20, 1957. The case is reported in 242F. 2nd page 273.

Jurisdiction

Jurisdiction to entertain this petition for writ of certiorari is found in the Supreme Court of the United States in this case in U.S.C. Title 28 section 1254 (1).

Statement of Case

This is an action brought under the provisions of U.S.C. Title 42 section 1983 through 1988 inc. The facts are as follows. The plaintiff MacNeil Bros. Company a Massaachusetts corporation was the mortgagor on a mortgage held by the State Realty Company of Boston Inc. in 1954. In July 1954 the said mortgagee made an entry for the purposes of foreclosing said mortgage. The plaintiff herein made several attempts to redeem the said real estate worth hundreds of thousands of dollars from the mortgage and possession of said mortgagee. That these suits went to trial in November 1954 and a final decree was entered permitting redemption to the plaintiff by the payment of some ninety three hundred and eighty seven dollars to the mortgagee or into court. The payment was offered to the mortgagee and refused by it and payment made into court. Thereafter, appeal from said final decree was prosecuted to the Supreme Judicial Court of the Commonwealth. In the interim the said MacNeil Bros. Company made every effort to obtain some order of court requiring release of the possession. The said decree offered that the mortgage would be discharged upon the said payment and possession released. However, upon said payment being made no such benefits were compelled by the defendants but rather an injunction was entered by both the Superior Court Justices and the Justices of the Supreme Judicial Court prohibiting the plaintiff from making any attempt to recover its property and enjoined it from all interference with the possession and control of the said State Realty Company of Boston Inc. It

furnished no security for losses at all. The property was continually wasted and damaged through the said control and management of State Realty Company of Boston Inc. Damages run in the hundreds of thousands of dollars to the plaintiff. And no protection whatever was made available to the plaintiff to protect or secure it against losses by said operation. The case was eventually decided by the Supreme Court of Massachusetts. The Court directed redemption immediately upon an immediate accounting being held. An accounting was held so called. All due process of law was denied and the credits to the plaintiff were not permitted to be introduced. Months passed without opportunity to recover its property being given to the plaintiff. The mortgage debt was satisfied in full in 1954, yet possession still remains in the said corporation State Realty Company at the time of filing of this petition. Hearings have been continuously denied for the determination of the fact of satisfaction of mortgage in 1954. No offer has been made whereby the plaintiff can obtain any security for its losses past or future by this operation. Even the plaintiff has been enjoined from prosecuting any cases seeking recovery of its property. See Record Page 9. The defendants have denied all possible relief and have denied recovery of its property under any terms conformably to the rescript. Application was made to the Supreme Judicial Court for assistance and such was summarily denied. See Record Page 43. No hearing can be obtained to effect release of the property and no release of it can be obtained by any orders of court. The record contains more complete descriptions of the treatment received from the defendants in the attempts by the plaintiff to obtain release of its property or in its attempts to obtain security for the losses being continually inflicted upon it by the acts of the State Realty Company under the protection of the injunctions of the defendants. The plaintiff has lost its property without being given any opportunity to obtain its release or to obtain any protection

for it whatever. Under the conditions it and others applied to the District Court of the United States for protection under the laws of the United States. (Civil Rights Act). The defendants filed Motion to Dismiss, without reserving any right to answer over. See Record Page 24. Thereby they admitted the truth of every allegation of fact well pleaded. The District Court sustained the motion. Appeal was taken to the Court of Appeals which in turn sustained the lower court. Petition for writ of certiorari is now pressed.

Questions Raised

The issues raised by the Petition for Certiorari are as follows;

1. Whether the Justices of the Superior Court or of the Supreme Judicial Courts of the Commonwealth of Massachusetts are subject to the provisions of the Civil Rights Act of the United States?

Reasons Why The Writ Should Be Granted

The petitioner represents that here we find a completely clear cut violation of the civil rights of subjects of the United States and of the Commonwealth of Massachusetts by the justices of its courts acting under the color of their offices. The actions are intentional and deliberate. Obviously there is no answer to be found from said persons by direct application to them. They have admitted all of the material facts alleged by their failure to traverse any of them nor to seek any such opportunity to deny the said allegations of fact at any time. The Court of Appeals went outside of the record to find an answer to the case. But actually found none. The fact of satisfaction in 1954 was suggested in the rescript in A.S. 1956 P. 819 last page of decision. But the refusal to act thereafter by the defendants and make the release possible is nowhere to be found in said record by the defendants. About

a year has passed and still no compliance with the rights of the plaintiff.

If there is no protection to the subjects of the United States from the abuses of the Justices of the State Courts, they have then become a law unto themselves. This violates the Constitution of Massachusetts, Article V, Part the First.

There appears no clear cut reconciliation between the decisions of several of the Circuits of the Court of Appeal and the Statutes Title 42 U.S.C. Section 1983 et seq. The variation is about complete. There are a few cases similar to Picking v Pennsylvania R.R. 151 F. 2d . . . but no clear reconciliation of the other Circuits and the Statute. In the interim there appears no protection whatever to the people of the United States from the abuses of the Justices of the individual states.

Amendment Fourteen of the Constitution is clearly violated.

Special note is called to the statement of the Court of Appeals on page 7 hereof, middle paragraph, in which the said Court suggests the relief may be had by application to the Supreme Court of the United States by mandamus.

Conclusion

The Petitioners pray that a writ of certiorari issue to the Court of Appeals for the First Circuit to review its said action in this matter.

Respectfully submitted,

ANGUS M. MACNEIL.
Counsel for the Petitioner

June 12, 1957

Appendix A

OPINION BELOW

Statement of the Grounds and Reasons of the Decision.

242 F. 2d page 274.

PER CURIAM.

This is an appeal from a judgment dismissing a complaint for failure to state a claim upon which relief could be granted.

On August 6, 1956, MacNeil Bros. Company, a Massachusetts corporation, filed its complaint under 28 U.S.C. § 1343(3) in the United States District Court for the District of Massachusetts against the defendants not named, but described as "the Justices of the Superior Court and the Supreme Judicial Courts of the Commonwealth of Massachusetts". It was alleged that, by various acts and omissions of the defendants under color of their respective offices as justices of the courts of Massachusetts, the plaintiff has been deprived of its property without due process of law and has been denied equal protection of the laws, contrary to the Fourteenth Amendment.

It seems that MacNeil Bros. Company has been involved in litigation in the courts of Massachusetts in an effort to redeem certain parcels of real estate, the mortgages on which had been foreclosed by the mortgagee. See State Realty Co. of Boston, Inc. v. MacNeil Bros. Co., Mass. 1956, 135 N.E.2d 291. In the complaint now before us, the federal district court is requested to order and direct the said justices of the Massachusetts courts "to immediately furnish to the plaintiff equal protection of its property to that furnished to other property owners in the Commonwealth of Massachusetts and to issue the required orders to terminate the waste and destruction of the plaintiff's property by the State Realty Company of Bos-

ton, Inc. acting under the protection of present orders of said defendants"; also the federal district court is requested to "ascertain and determine the losses and damages suffered by the plaintiff (sic) by reason of the refusals and failures of the defendants to furnish equal protection under the laws to the rights and properties of the plaintiff from losses and destruction by the State Realty Company of Boston, Inc. and those claiming under it."

It would be difficult to imagine a more flagrant and provocative interference by a federal district court with the processes of litigation in a state court than what is sought by the present plaintiff-appellant. Compare the discussion in Toucey v. New York Life Ins. Co., 1941, 314 U.S. 118, 62 S.Ct. 139, 86 L.Ed. 100. Naturally a federal court of equity if otherwise empowered to act, would hesitate as a matter of judicial discretion to grant relief of the delicate character here asked for, when any federal constitutional claim arising in the course of the state litigation might be presented to the United States Supreme Court on certiorari. In fact it does not appear that MacNeil Bros. Company ever sought a writ of certiorari in State Realty Co. of Boston, Inc. v. MacNeil Bros. Co., supra, wherein Chief Justice Qua, in an elaborate opinion, and with extraordinary patience, undertook to sift out and determine the legal issues in a mixed-up and complicated piece of litigation. And if it is true, as asserted at the oral argument, that the state courts have thwarted review on certiorari by refusing to enter final judgments, such an obstacle to the potential appellate jurisdiction of the Supreme Court of the United States can be removed by a writ of mandamus issued by that Court. See McClellan v. Carland, 1910, 217 U.S. 268, 30 S.Ct. 501, 54 L.Ed. 762.

Apart from the foregoing, it is clear that the district court was right in dismissing the complaint. See Covington & Cincinnati Bridge Co. v. Hager, 1906, 203 U.S. 109, 111, 27 S.Ct.

24, 51 L.Ed. 111; Marshall v. Crotty, 1 Cir., 1951, 185 F.2d 622, 626-27. Appellant's effort to collect damages against the state court judges is foreclosed by our decision in Francis v. Crafts, 1 Cir., 1953, 203 F.2d 809.

A judgment will be entered affirming the judgment of the District Court.

Appendix B

Amendment Fourteen to the Constitution of the United States.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

PORTIONS OF TITLE 42 U.S.C.

Section 1983 - page 297.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. § 1979.

Section 1985 (2) - page 331.

" . . . if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner,

the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;"

Section 1985 (3) - page 332.

" . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. R.S. § 1980."

Section 1986 - page 343.

"Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; . . . "

Section 1988 - page 344.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in

their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of criminal nature, in the infliction of punishment on the party found guilty. R.S. § 272.

PORTIONS OF TITLE 18 U.S.C.

Section 241.

"If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the United States, or because of his having so exercised the same . . . . .

They shall be fined not more than $5,000 or imprisoned not more than ten years or both." June 25, 1948 c 645, 62, Stat. 696."